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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

PORTUGAL (MACAU)

1. At its 1476th and 1477th meetings, held on 4 April 1997, the Human Rights Committee considered the third periodic report of Portugal relating to Macau (CCPR/C/70/Add.9) and adopted 1/ the following observations:

A. Introduction

2. The Committee welcomes the presence of a high-level delegation, which included several officials of the Macau government. It expresses its appreciation to the representatives of the State party for the high quality of the report, abundance of additional information and detailed and frank answers provided in response to the oral and written questions posed and comments made by the Committee during its consideration of the report. The Committee notes with satisfaction that such information enabled it to engage in a highly constructive dialogue with the State party.

B. Factors relating to reporting obligations under the Covenant

3. The Committee notes that given the late extension of the Covenant to Macau, the Sino-Portuguese Joint Declaration and Exchange of Memoranda of 13 April 1987 does not refer to it and merely states that the laws currently in force in Macau will remain basically unchanged and that all rights and freedoms of the inhabitants and other persons in Macau, including the rights

of the person, freedoms of speech, of the press, of assembly, of association, of travel and movement, to strike, of choice of occupation, to undertake academic research, of religion and belief and of communication and the right t o own property will be ensured by law in the Macau Special Administrative Region. This was followed by a Memorandum of Understanding between the People's Republic of China and the Government of Portugal, signed by their respective Ambassadors, for extension of the Covenant to Macau with reservations, and thereafter by resolution 41/92 of the Assembly of the Portuguese Republic of 31 December 1992, stipulating that the provisions of the Covenant were extended to Macau with certain reservations, particularly in regard to article 12, paragraphs 4 and 13. The Committee notes that article 40 of the Basic Law of the Macau Special Administrative Region of the People's Republic of China, adopted by the People's Congress on 31 March 1993, states that the provisions of the Covenant shall continue in force after 19 December 1999 and shall be implemented through the laws of the Macau Special Administrative Region.

4. Accordingly, the Sino-Portuguese Joint Declaration, read in conjunction with the Memorandum of Understanding and the Basic Law, appears to provide a sound legal basis for the continued protection in Macau after 19 December 1999 of the rights specified in the Covenant. The Committee, moreover, wishes to reiterate its long-standing position that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered into by the predecessor State. Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, such protection cannot be denied to them merely on account of the dismemberment of that territory or its coming within the jurisdiction of another State or of more than one State. 2/ Consequently, the reporting requirements under article 40 of the International Covenant on Civil and Political Rights will continue to apply and the Human Rights Committee expects to receive and review reports in relation to Macau after 19 December 1999.

C. Positive aspects

5. The Committee welcomes the fact that the death penalty has been abolished in Macau, including for military crimes. In this context, it notes with appreciation that the domestic law as interpreted by the Superior Court of Justice prohibits extradition to a country where the person concerned may be sentenced to death.

6. The Committee notes with appreciation that strict safeguards exist in the Organic Statute of Macau with regard to the declaration of a state of siege or state of emergency and that non-derogable rights under article 4, paragraph 2, of the Covenant may under no circumstances be derogated from.

7. It is also noted with appreciation that under article 30 of the Portuguese Constitution persons deprived of their liberty are entitled to continue to enjoy their fundamental rights, save for those limitations that are inherent in their imprisonment.

8. The Committee welcomes the efforts being made by the authorities to disseminate information on human rights to members of the judiciary, civil servants, teachers and the public in general.

9. The Committee notes with appreciation that under article 22 of the Portuguese Constitution, read in conjunction with article 2 of the Organic Statute of Macau, State agencies and public bodies are held liable for actions or omissions resulting in violations of human rights.

10. The Committee welcomes the setting up of new institutions and offices to protect human rights, such as the Public Information and Assistance Centre and the High Commission against Corruption and Administrative Illegality.

D. Principal subjects of concern

11. The Committee notes with concern that, while the majority of the population is Chinese-speaking, official charge forms and charge sheets, as well as court documents and decisions, are in Portuguese only, although efforts are being made to make Chinese versions available to the people.

12. The Committee is concerned that, despite guarantees of equality in the Constitution and in labour legislation, de facto inequalities continue in regard to the situation of women and their remuneration. The persistence of certain traditional attitudes and practices contributes to this inequality and discrimination in the workplace.

13. The Committee is particularly concerned at reports on the extent of trafficking in women in Macau and on the large numbers of women from different countries who are being brought into Macau for the purpose of prostitution. The Committee is extremely concerned at the inaction by the authorities in preventing and penalizing exploitation of these women and that, in particular, immigration and police officials are not taking effective measures to protect these women and to impose sanctions on those who are exploiting women through prostitution in violation of article 8 of the Covenant.

14. The Committee expresses concern at the low percentage of locally born residents holding senior positions within the public administration, thus raising the issue of implementation of article 25 of the Covenant.

15. The Committee is concerned that no firm arrangements have been made between the Governments of China and Portugal with regard to the nationality of the residents of Macau after 19 December 1999.

16. The Committee regrets that, despite the efforts that are being made by the authorities to disseminate information in regard to the rights recognized in the Covenant, the public in general, and non-governmental organizations in particular, were not adequately informed of the Human Rights Committee's consideration of the report. The Committee is also concerned that non-governmental organizations in Macau are not being encouraged to participate in programmes for the promotion and protection of human rights and that their cooperation is not sought in regard to the implementation of human rights.

E. Suggestions and recommendations

17. The Committee recommends that efforts be accelerated to introduce, as soon as possible, the use of the Chinese language in the courts at all levels and particularly in regard to court documents and decisions.

18. The Committee recommends that determined efforts be made to ensure a substantial rise in the percentage of locally born residents holding senior posts within the public administration and the judiciary.

19. The Committee further recommends that the Government should initiate or strengthen programmes aimed at providing assistance to women in difficult circumstances, particularly those coming from other countries who are brought into Macau for the purpose of prostitution. Strong measures should be taken to prevent this form of trafficking and to impose sanctions on those who exploit women in this way. Protection should be extended to women who are the victims of this kind of trafficking so that they may have a place of refuge and an opportunity to stay in order to give evidence against the person responsible in criminal or civil proceedings.

20. The Committee recommends that the provisions of article 4 of the Portuguese Assembly's resolution No. 41/92, whereby articles 12, paragraph 4, and 13 of the Covenant are not applicable to Macau as far as entry and departure of persons and the expulsion of foreigners from the Territory are concerned, be repealed as soon as possible.

21. The Committee recommends that human rights education be extended to members of the police and security forces, the legal profession and other persons involved in the administration of justice, with a view to making it a part of their regular training.

22. The Committee suggests that further efforts be undertaken to disseminate information in regard to the rights recognized in the Covenant and the activities carried out by the Committee. In particular, it recommends that the present Concluding Observations be widely disseminated among the public.

Notes

1/ At its 1584th meeting (fifty-ninth session), held on 10 April 1997.

2/ See documents CCPR/C/SR.1178/Add.1, SR.1200-1202 and SR.1453.